

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

No. 05-60008-2-HO

July 27, 2010

Eugene, Oregon

8
9 TRANSCRIPT OF ORAL ARGUMENT

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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1 (Tuesday, July 27, 2010; 3:23 p.m.)

2 P R O C E E D I N G S

3 THE CLERK: Case No. 05-60008, *United States of*
4 *America versus Pirouz Sedaghaty*, oral argument on motion
5 in limine.

6 THE COURT: Thank you. All right. Counsel,
7 I'm familiar with your papers. What else do you have on
8 this?

9 MR. MATASAR: Do you want me to -- well, do you
10 want me to discuss the additional facts?

11 Your Honor, Mr. Cardani and I and Mr. Wax, and
12 actually most of the people here, including the agents,
13 not our client, met this morning to iron out some of the
14 facts. And I think one of the things we've agreed to is
15 that the documents in the record, the AHIF series
16 numbers 1, 2, 4, 5, 6, and 7, are all documents that
17 contain a number from 20,001 -- a Bate stamp number from
18 20,001 to 20,140. And that these documents, it turns
19 out, I have some visual aids, but I think they are
20 satisfied, it turns out that these documents were
21 provided to me by Washington lawyers on September 29,
22 2003.

23 So these documents were not present in Ashland
24 during the time of the events in the indictment. The
25 documents were responsive to the subpoena, so that's why

1 they were provided. The subpoena and the subsequent
2 communications between the government and me indicating
3 what documents they want, so that's why they were
4 provided. There was no source requested or given at
5 that time.

6 Since then, of course, Ms. Anderson has gone
7 into the location of those documents at the time, but I
8 think we have shown both by the documents in my file and
9 also the lawyers who sent them to me have confirmed that
10 the documents were sent on September 26, 2003. They
11 have copies of the documents without the Bate stamp.
12 Our copies are in -- rubber banded around the envelope
13 that they were sent in. So I think we can all agree
14 that those documents were in the 20,000 series, and any
15 others that may come in before the court from 20,001 to
16 20,140 were not in Ashland at the time of the events of
17 the indictment. Is that --

18 THE COURT: So you have got 1 through 7,
19 omitting 3?

20 MR. MATASAR: Yes, correct. That was the
21 easier way to say it than I said it.

22 THE COURT: I just want to make sure I got it
23 right.

24 MR. CARDANI: Judge, by way of background, so
25 this has been a running discussion.

1 MR. WAX: Yes, Your Honor, Exhibit Number 9 is
2 also in that series. It, however, has been the subject
3 of a prior discussion between the parties, and agreement
4 with respect to its admissibility, along with a number
5 of other documents that related to communications
6 between Dr. El-Fiki and al-Haramain.

7 MR. CARDANI: Okay.

8 MR. WAX: So that's why we're not raising any
9 issues with respect to that one, even though it's in
10 that series.

11 MR. CARDANI: So, Judge, just by way of
12 background, we served a subpoena on the corporate
13 offices of al-Haramain way back in '03 in the infancy of
14 this investigation. Mr. Matasar assumed the
15 representation of Mr. Sedaghaty as well as al-Haramain,
16 and assumed responsibility for gathering and producing
17 corporate documents, which we're entitled to under the
18 subpoena.

19 We got one batch from Mr. Matasar that was very
20 limited. That led to a series of discussions.
21 Mr. Matasar then went back and ended up producing a
22 second and yet a third batch of documents that
23 collectively were al-Haramain documents.

24 Special Agent Anderson spoke with Mr. Matasar.
25 And it's her recollection that he said at the time that

1 these documents all came from the Oregon offices, and
2 thus all of the AHIF documents, as we're calling them,
3 we can put in the offices of al-Haramain Oregon.

4 Mr. Matasar has recently resurrected his memory
5 by looking at his files, by spending some time with his
6 secretary and also speaking with, as I understand it, an
7 al-Haramain attorney from the East Coast who's
8 represented al-Haramain on other matters. And that some
9 of these documents, the ones just described, 1, 2, 4, 5,
10 6, 7, and 9, now appear -- we just learned about this
11 yesterday -- not having emanated -- were not collected
12 from the Ashland offices. Whether they were there at
13 one time or not, who knows. But Mr. Matasar got these
14 from the D.C. attorney, and gave those to Special Agent
15 Anderson in what I understand is the second batch, which
16 they Bate stamped as the 20,000 series.

17 Then there were still documents that were
18 missing or we should have gotten, we had further
19 discussions. And Mr. Matasar then controlled a third
20 production of documents that covered the remaining AHIF
21 exhibits, 3, 8, 10, 11, and 12, as I understand it,
22 which they are saying did come from the Ashland offices
23 of al-Haramain.

24 Now, we met with Mr. Matasar this morning. He
25 discussed this and we trust him. We take him at his

1 word on this. I think for purposes of this trial, we
2 need to come up with appropriate language that
3 memorializes this, so that we can -- we're able to
4 produce Special Agent Anderson on the stand during
5 trial, and she can say, I got AHIF 1 through 12 from
6 Larry Matasar or a representative of the defendant,
7 however we want to put it. We think that's enough in
8 terms of authentication of the documents to get the
9 conversation going towards admissibility and move on.

10 If we want to give the jury some more clarity
11 on this, I suppose we can. But this provides new light,
12 recent light, on the origins of these documents. But
13 the bottom line is these were all documents that were
14 given to us in response to that one subpoena, yet over
15 three dates.

16 So I think for purposes of our motion, we are
17 really in kind of a similar posture, these are all
18 documents provided in response to the subpoena, so I
19 think that given the fact that where we got them from,
20 the question then becomes are there rules of evidence
21 that should make them admissible?

22 We are unable, because of how we got these
23 documents, to produce custodians of records to say that
24 these were business records of al-Haramain. We can't do
25 that. We don't know the source of these documents. But

1 I think from our brief, there are other rules of
2 evidence, for example, the two receipts, AHIF 2 and AHIF
3 3, which the defendant signed, which the codefendant
4 al-But'he signed. Clearly admissions of a party
5 opponent. So I think these are authenticated, given to
6 us by counsel, and as long as we have enough evidence to
7 make a minimal showing that the defendant was likely to
8 have signed those, and we do, we have known signatures
9 of the defendant, and a comparison of these documents,
10 and those of al-But'he, we'll show that there is reason
11 to believe that they both signed those -- that AHIF 2
12 and AHIF 3, render them inadmissible (sic) on those
13 basis alone.

14 And we have a series of other -- I've explained
15 them in my brief, but there are other reasons why a lot
16 of these other documents are admissible because they are
17 not hearsay at all. We're not offering them for the
18 truth of the matter asserted. And for that matter,
19 Exhibits 2 and 3, we're not offering for the truth, we
20 think that they are fabrications. We're offering them
21 to show that they are not true. And we found cases
22 indicating that when you are offering something to show
23 a falsity, not for the truth, that they are outside --
24 that they are not hearsay.

25 So we're prepared to go through them one by

1 one, but the new information, if I've stated it
2 correctly, I think just provides the court with a little
3 bit more of an understanding, and us a little bit more
4 of an understanding as to how these documents came into
5 our possession. But the bottom line is they were all
6 produced to us as responsive documents to that subpoena
7 back in 2003.

8 THE COURT: All right. Why don't you just go
9 through and summarize your position on each of these one
10 by one then. Now, on this one, what I have here is that
11 the defendant would agree to the admission of Number 1
12 if the government stipulates that the handwriting is of
13 Soliman al-But'he.

14 MR. WAX: That is no longer correct, Your
15 Honor. These new facts put Exhibit Number 1 in a
16 different light, and I will be articulating that when
17 Mr. Cardani is done.

18 I've also put together a one paragraph pleading
19 just to complete the record on that, which we can file
20 later on today or tomorrow morning.

21 THE COURT: All right. Mr. Cardani.

22 MR. CARDANI: So --

23 THE COURT: I won't rely on my notes here,
24 because, apparently, too many things have changed.

25 MR. CARDANI: Yeah, I know. It's hard to

1 respond on the fly to something that's changed so
2 quickly, but the writing -- this cashier's check comes
3 in under another exhibit all by itself.

4 The only additional material is that
5 handwritten notation "donations for Chichania refugees."
6 We're not offering that for the truth of the matter
7 asserted. In fact, once again, we're offering that as
8 part of attempted coverup. That this was not a donation
9 for Chechnyan refugees, that this was given to us in
10 response to a subpoena where I think that there was an
11 understanding by people involved in this transaction
12 that we were kind of onto them, and that this was an
13 attempt to throw people off, and make this appear to be
14 something that it was not. So we're not offering that
15 comment for the truth of the matter asserted.

16 We don't know for certainty who wrote this. It
17 probably was al-But'he, we don't know, and we couldn't
18 stipulate to that. But I don't think we need to get
19 there because this was given to us by the defense again
20 in response to that subpoena and we're not offering it
21 for its truth.

22 THE COURT: Number 2.

23 MR. CARDANI: Not offered for the truth. But
24 in any event, it's signed by Defendant Sedaghaty. It's
25 an admission. It's signed by Soliman al-But'he. It's a

1 coconspirator statement.

2 THE COURT: Do you have evidence on whether
3 these are their signatures?

4 MR. CARDANI: Yes, yes. We have -- we have
5 American Express Travelers Checks signed by al-But'he in
6 front of a bank witness that we'll be presenting at
7 trial. And a side-by-side comparison will show that
8 there is reason to believe that that distinctive
9 signature is that of that known signature of al-But'he.

10 The writing in the bottom of AHIF 2 we're not
11 offering for the truth. I cite a case, the *Black* case,
12 that's helpful in analyzing this as well on Exhibits 2
13 and 3.

14 So if I can move on to 3.

15 THE COURT: Yes.

16 MR. CARDANI: Yes. That is the same verbiage
17 as AHIF 2, as I'm calling it, the words themselves
18 appear to be representing the same transaction. But
19 there are differences. And there are differences that
20 are very important to us. And we want to show them to
21 the jury, because to us this appears as though Defendant
22 Sedaghaty and al-But'he kind of blew it when they tried
23 to make it look like this transaction was something
24 other than what we think it is. And they signed two
25 different versions of this, putting in different amounts

1 of money. They signed these things in different order.
2 One has witnesses that are purported to have seen this.
3 We don't know who they are as we talk now. And then one
4 has the additional language about depositing the
5 amounts.

6 We think this is very good evidence, again, of
7 admissions by a party opponent because the defendant
8 signed this, and we'll show known signatures of the
9 defendant as well to allow you or the jury an ability to
10 conclude that the defendant did sign these documents.

11 THE COURT: Number 4.

12 MR. CARDANI: This is the most problematic of
13 our exhibits of the AHIF series. This -- until the new
14 information about where this thing came from, this is
15 one of the documents that we learned yesterday came from
16 the D.C. lawyers, and we don't know if it was ever in
17 the Ashland offices.

18 But this is a summary of the funds used to buy
19 the mosque in Missouri, which is a very important part
20 of the case because it was that purchase that was
21 mischaracterized by the defendant in a tax return filed
22 by the IRS. This shows the purchase price of \$375,000
23 and also the people that donated money into this.

24 I say this is the most problematic for us
25 because we don't have the defendant signing this. And

1 it -- if it was never in Oregon or at least the time it
2 was produced, if we can't put this in the Oregon
3 offices, it makes it a lot more difficult to offer this
4 as reflective of the defendant's intent.

5 But, again, I need some more time to think
6 about this. I just heard about this last night because
7 we thought it was in the Ashland offices.

8 THE COURT: 5.

9 MR. CARDANI: Number 5, Number 6, and Number 7
10 are all very routine real estate records that reflect
11 the purchase, again, of the Missouri building. These
12 are almost duplicative of documents that we'll be
13 calling a lawyer from the Midwest who represented the
14 defendant and al-Haramain in the purchase of the
15 Missouri mosque. He will say I sent the closing
16 documents and the documents related to the purchase of
17 the Missouri building to Mr. Sedaghaty in Ashland,
18 Oregon. We have the mailing. We have it as an exhibit.
19 It contains a lot of these same type of documents.

20 THE COURT: Can he authenticate these
21 documents?

22 MR. CARDANI: We can authenticate -- well,
23 until last night, I had these coming out of the Oregon
24 office. And, obviously, that's going to be impacted as
25 well. But what I wrote in my brief about this was that

1 because of where these were found or where these were
2 collected from and given to us, the offices of
3 al-Haramain, shows that it's within the defendant's
4 knowledge. I can no longer say that. But I'd like some
5 time to think about it, so I'd ask the court to reserve
6 ultimate rulings on this because I don't know if I have
7 other ways to authenticate these.

8 THE COURT: Number 8.

9 MR. CARDANI: Number 8, the defense agrees came
10 out of the Ashland offices. And these directly relate
11 to the El-Fiki transaction, so I don't know if the
12 defense has any objections to this one.

13 THE COURT: On 8 and 9, I show there are no
14 objections.

15 MR. WAX: That's correct.

16 THE COURT: Thank you.

17 MR. CARDANI: So if I can move on to 10, 11,
18 and 12, the defense agrees that these came from the
19 Ashland office of al-Haramain. And these are very
20 important intent documents, because these show a
21 knowledge of the treatment of the \$150,000 that came in
22 from this Mr. El-Fiki. They were in the defendant's
23 computer. There are some notations on them that some
24 money, page 2 of Exhibit 10, we have a reference to
25 \$318,000 and change. That was a check that was made to

1 First Escrow for the purchase of the Masjid. This is
2 the check used to buy the Missouri mosque. And
3 indicates that the defendant was aware of the funds that
4 were necessary to buy that. And that, again, was the
5 transaction that was mischaracterized in the tax return.

6 We want to be able to argue from documents like
7 this and the two next ones that the defendant was well
8 aware of the Missouri details.

9 THE COURT: Were all three of these off the
10 computers, including 11?

11 MR. CARDANI: If I can just have a moment.

12 AGENT ANDERSON: Yes, all three of these were
13 found as attachments.

14 MR. CARDANI: Agent Anderson says these were
15 all found within the computer or attachments to
16 documents within the al-Haramain seized computers.

17 MR. MATASAR: Not this version.

18 MR. WAX: Not these. These were hard copies.
19 These are not from the computer.

20 MR. MATASAR: They may also be in the computer.

21 MR. WAX: Well, but these documents are not.
22 These are not from the computer.

23 AGENT ANDERSON: Yeah, that's correct, but the
24 same --

25 MR. CARDANI: If I can have a moment.

1 THE COURT: Off the record.

2 (Discussion held off the record.)

3 MR. CARDANI: So, Judge, if I can go back on
4 the record.

5 THE COURT: You may.

6 MR. CARDANI: The verbiage, I'm told, were
7 found in the computers. There is some handwritten
8 notations on 10 and 11 that were not found in the
9 computers. So what happened here was hard copies of
10 this information that came out of the al-Haramain
11 computers was collected by somebody in the Ashland
12 offices, there were hard copies laying around, and it
13 had handwritten notations on it. They were collected,
14 ultimately given to Mr. Matasar, and provided to us from
15 the Oregon offices.

16 THE COURT: Okay. As far as -- are you
17 satisfied with the sort of -- that you can show the
18 foundation absent Mr. Matasar's testimony? In other
19 words, that they came out of the office?

20 MR. WAX: We don't contest that they came out
21 of the office.

22 THE COURT: You agree to that?

23 MR. WAX: Yes.

24 MR. MATASAR: Yes.

25 MR. WAX: Yes. We have worked over the last

1 couple of months on agreeing that they were in the
2 office. And as we have set out in our pleadings, we
3 don't think that gets them into evidence. But we do not
4 contest their origin and how the government obtained
5 them.

6 THE COURT: All right. Mr. Wax?

7 MR. WAX: The new facts with respect to the
8 Exhibits 1, 2, 4, 5, 6, and 7, we believe are most
9 significant to the bases on which the government has
10 offered them.

11 At the outset, we don't believe that the
12 government's indication that these are very important to
13 their case has any bearing on the application of the
14 rules of evidence.

15 Second, we pointed out in our pleadings that
16 the fact that they were provided by Mr. Matasar through
17 this subpoena process in no manner renders them
18 admissible. All it does is get them into the
19 government's hand. We don't contest that. But you then
20 have to make the determinations on admissibility.

21 With respect to the specifics, Exhibit Number 1
22 and Exhibit Number 2 raise the same issue as we see it.
23 And that is that these documents contain handwriting
24 that the government cannot establish who, where, or when
25 it was put on the document. To the extent that they are

1 offering them as statements of a conspirator,
2 coconspirator, they would have to establish that the
3 entire document, including the handwriting on it, was
4 made during the course of the conspiracy.

5 The indictment alleges that the conspiracy
6 ended in October of 2001. What the parties have been
7 able to agree upon is that these documents were not in
8 Ashland available for provision by Mr. Matasar by
9 gathering up records there. They came into his
10 possession in September of 2003. There is, as a result,
11 a lack of proof that the handwriting was made during the
12 course of and in furtherance of the conspiracy.

13 It may be that the check itself, item number
14 one, is admissible without the handwriting on it. The
15 government has other versions of this check, which I
16 believe they have marked as exhibits that have come from
17 either the Bank of America or through their search
18 warrant process, and we do not object to the
19 introduction of the check itself. But with respect to
20 item number one, the "donations to Chichania refugees,"
21 the Arabic on it, particularly the English "donations
22 for Chichania refugees," they're lacking a necessary
23 factual predicate.

24 The same thing would be true with respect to
25 Exhibit Number 2. The handwriting "I deposit the

1 amanet" could have been written by, if it is
2 Mr. al-But'he, in September of 2003, when he provided
3 this to whomever he provided it, a lawyer, it appears,
4 that ended up in another lawyer's hands that was then
5 provided to Mr. Matasar. We do not know.

6 The government cannot establish that this is
7 made during the course of the conspiracy and in
8 furtherance of the conspiracy.

9 If Mr. al-But'he was acting to engage in the
10 coverup that Mr. Cardani describes in 2003, perhaps he
11 could be charged with a separate effort to obstruct
12 justice, but we see no basis for attributing this
13 comment to Mr. Sedaghaty and having it introduced in
14 evidence against him.

15 We have in our pleadings articulated other
16 objections to Exhibits 2 and 3, which I won't repeat.

17 I was pleased to hear Mr. Cardani indicate that
18 he views AHIF 4 as, in his perspective, the most
19 problematic of the government's proffered exhibits. We
20 believe, however, that the reason that he articulates
21 for this being a problem is equally applicable to
22 Exhibits 1 and 2 with the handwritten notation on them.

23 There is no evidence that this was produced in
24 Ashland. No evidence that Mr. Sedaghaty ever saw it.
25 No evidence that this was produced during the course of

1 and furtherance of the alleged conspiracy. And they
2 must establish those facts prior to the court's being
3 able to exercise its gatekeeping function, and find this
4 was during the course of and in furtherance of a
5 conspiracy, if they don't give you facts from which you
6 can make that finding, we don't see that there is any
7 basis for admissibility.

8 The same issue, Judge, exists with respect to
9 Exhibits 5 through 7. And, again, Mr. Cardani, you
10 know, has noted that he perceives a potential problem,
11 and we think that he is absolutely right. The
12 government proffered 5 through 7 because they believed
13 that they could show that Mr. Sedaghaty had had those
14 exhibits in his possession.

15 THE COURT: I don't need more on those just
16 now.

17 MR. WAX: Thank you.

18 We've indicated no objection to 8 and 9.

19 With respect to 10 through 12, while they are
20 found in the property in Ashland, as we've articulated
21 in our pleading, that doesn't render them admissible.
22 The government has no proof who prepared them, why they
23 were prepared, or when. There is no proof that they
24 were prepared as in the ordinary course of business.
25 And when they engaged in the sidebar and dialogue with

1 respect to there being multiple copies of these
2 documents, these in hard copy with handwriting on them,
3 other copies on the computer, there is no proof whose
4 handwriting this is, why it's put there, is it part of a
5 conspiracy, is it not part of a conspiracy, et cetera.

6 So we believe that for the reasons we have
7 articulated, plus these, they should be ruled
8 inadmissible.

9 THE COURT: Thank you. My rulings are as
10 follows: On these AHIF Exhibits 1 through 12, Number 1
11 is received, but the handwriting is not received for its
12 truth.

13 Numbers 2 and 3 are received, but not for their
14 truth.

15 Number 4 is not received on this record.

16 Number 5, 6, and 7 I'll take under advisement.
17 I don't believe that sufficient authentication has been
18 provided.

19 Numbers 8 and 9 are received.

20 And Numbers 10, 11, and 12 are received, but
21 not for the truth of what is written on them --
22 handwriting that's on them.

23 All right. There is another motion before the
24 court and that is the defendant's motion for a bill of
25 particulars. Do you wish to be heard further on that?

1 MR. WAX: I'm sorry, Your Honor, I did not hear
2 which motion you were referring to.

3 THE COURT: A motion for a bill of particulars,
4 Number 374.

5 MR. WAX: Your Honor, we have filed more than
6 one motion for a bill of particulars. I regret that I
7 don't have that one with me. Which one is this?

8 THE COURT: All right. I can pull it out.
9 Frankly, it's the one where you don't cite any Ninth
10 Circuit cases, I know that.

11 MR. WAX: If your clerk has it handy, if I
12 could take a quick look.

13 THE COURT: I know you filed lots of motions.
14 (Discussion held off the record.)

15 THE COURT: Yeah. This is the one where you
16 want to have all the coconspirator statements
17 identified.

18 MR. WAX: Yes. Oh, thank you. We've
19 articulated there what we believe is a fundamental
20 unfairness with the way in which the case is currently
21 proceeding.

22 The government announced in one pleading
23 Mr. Al Shoumar as a coconspirator. There is no
24 evidentiary basis for that. And before any statement
25 can be admitted as a coconspirator statement, we believe

1 the government needs to make a showing, you have an
2 obligation to rule. In terms of calling witnesses, for
3 all we know at this point, we may call a witness the
4 government decides is a coconspirator, and we should not
5 be put in the position in which we might call a witness,
6 find that the government declares that person a
7 coconspirator, and then in the court's instructions at
8 the end of the case if you give a coconspirator
9 statement instruction, find ourselves saddled with, you
10 know, having called a person who they view in one way,
11 we view in a different way without having had an
12 advanced ruling from the court about just who or what it
13 is that we're dealing with.

14 THE COURT: All right. Any -- do you wish to
15 be heard on that?

16 MR. CARDANI: No.

17 THE COURT: The motion is denied. That can
18 happen at trial.

19 Now, what I have tried to do through Mr. Baker
20 here, is marshal all of the remaining issues and
21 exhibits that need rulings. And it's my commitment to
22 try to -- no later than mid-week next week -- have out
23 something that resolves everything that's before me, so
24 you don't have to guess. All right?

25 MR. CARDANI: Yes. I have a few other

1 matters --

2 THE COURT: Good.

3 MR. CARDANI: -- if the court has completed --

4 THE COURT: Sure.

5 MR. CARDANI: We, as the court knows from some
6 litigation involving the Al Rajhi Bank, we have now been
7 provided with a total of two batches of records from the
8 Al Rajhi Bank. We are going to offer portions of them
9 at trial under a provision of law 18 U.S.C. Section
10 3505, which allows us to get foreign business records
11 properly certified into evidence without calling the
12 foundational witnesses.

13 Mr. Wax and Mr. Matasar have been provided
14 copies of this earlier today. And I'd like to serve it
15 on the court now as well, but this is our notice that
16 we're required to provide the court and to the defense
17 of our intent to rely on this section of law to get
18 records in at trial without calling the witnesses. So
19 if I could tender that to the court right now.

20 And we will be addressing this subject as well
21 in our trial brief going over this provision of law and
22 cite the court some Ninth Circuit cases of recent
23 vintage where this procedure has been followed.

24 THE COURT: All right. Anything further?

25 MR. MATASAR: Do you have some more?

1 MR. CARDANI: I do, but --

2 MR. MATASAR: Alternate, however you want to do
3 it.

4 MR. CARDANI: Schedules, Judge, we had -- we
5 thought we were going to be done with this trial right
6 now, so we planned some pretty lock solid vacations.

7 THE COURT: Sure.

8 MR. CARDANI: I'd like to give the court and
9 the clerk's office some dates that Mr. Gorder and I are
10 not going to be in the district, and absent an
11 emergency, not able to attend to this trial -- pretrial
12 issue. I'm leaving next Tuesday, August 3rd, and I'll
13 be gone until August 18th. And Mr. Gorder will be
14 gone --

15 MR. GORDER: I'll be gone, Your Honor, from
16 August 2nd through the 12th.

17 THE COURT: Wonderful.

18 MR. GORDER: Although, I'll be outside of
19 Roseburg as part of that, so I will be in the district.

20 MR. CARDANI: On the Umpqua River, great
21 Internet service. So we'll be ready to go when we
22 return, but I just wanted to advise the court of that.

23 We're working on our trial brief and jury
24 instructions. And we'd ask that we have some deadlines
25 set to give the court adequate time to take into

1 consideration both of those types of submissions.

2 THE COURT: Have I given you trial brief
3 deadline or jury instruction deadlines?

4 MR. CARDANI: Not since the trial was
5 continued.

6 THE COURT: All right. How long do you want,
7 Mr. Baker?

8 MR. BAKER: As much time as possible.

9 THE COURT: When can you have them?

10 MR. CARDANI: If we file them -- would the 19th
11 of August be too late?

12 MR. BAKER: That should be good.

13 MR. CARDANI: Thursday, the 19th.

14 THE COURT: It's a deal. I'll help you take
15 the medicine if you'll prescribe it.

16 MR. CARDANI: Okay. We'll file our court --
17 file the trial brief and jury instructions by the 19th.
18 That's all I had on my list, Judge. Thank you.

19 THE COURT: Mr. Matasar.

20 MR. MATASAR: Your Honor, we had two things.
21 One is that, as you heard during the time that we talked
22 about continuing the case, we've divided up the case
23 kind of informally or formally within our defense team,
24 but I've been doing a lot of the issues concerning the
25 accounting, Mr. Wilcox, Ms. Anderson, we have an expert

1 that I met with from D.C., a man formerly head of the
2 Tax Exempt Division of the Internal Revenue Service.
3 And I've been doing that. Mr. Wax has been doing the
4 other parts of the case. And we had thought that it
5 would be best for us both to be giving various -- giving
6 parts of the opening statement in the case, and perhaps
7 the closing.

8 I know from my experience in state court where
9 I have seen this occur, there is, in fact, even a rule
10 in Oregon Rule of Civil Procedure, which, of course, is
11 very far from binding on this court, but which says
12 something like no more than two people can take part in
13 the opening and closing. So it's assumed that two can.

14 We think it would be most efficient for the
15 court and for the jury if we could do that, and yet I
16 know Your Honor may have some strong feelings about
17 that. And we'd probably rather know now than just have
18 Mr. Wax start, and then say Mr. Matasar, and then you
19 say, wait a minute, we don't want that to occur. In
20 fact, we had some discussions about whether to raise it,
21 but I think it's fairest for all of us if we could do
22 that, if we could get your idea of that. We think it
23 would be more efficient and better, but we'd like to
24 know.

25 THE COURT: One lawyer per opening, one per

1 closing. Anything else?

2 MR. WAX: Technology and logistics in the
3 courtroom. Which table do we sit at during the trial?
4 We've been on this side in all the pretrial proceedings.
5 Will we continue to be here, or do you shift sides when
6 the jury comes?

7 THE COURT: I've never paid it a second
8 thought. I did have -- there was a criminal case where
9 we almost had a fist fight between the lawyers.

10 MR. MATASAR: I was involved in one of those in
11 Judge Brown's first jury trial, yes.

12 THE COURT: Wonderful. We had an assistant
13 whose initials are JK who had a temper that came out one
14 morning.

15 MR. WAX: Would we assume, then, we'll just
16 continue in these positions?

17 THE COURT: Does anyone object to that?

18 MR. CARDANI: No.

19 THE COURT: No. That's fine.

20 MR. WAX: In terms of support in the courtroom,
21 I believe both sides are going to have courtroom
22 technology people.

23 THE COURT: Yes.

24 MR. WAX: Ms. Wells, who's in the audience,
25 came down today just to plug things in, and we were

1 looking in Courtroom 3. We may want to try to use a
2 local -- I don't know what it's called. Internet
3 wireless --

4 MR. MATASAR: We tried a device, Your Honor,
5 which turns cell phone signals into a small Wi-Fi spot,
6 but it works almost everywhere but not really in this
7 courthouse very well. So it's very slow. So we're
8 going to try to get maybe the staff to provide us with
9 an Internet connection so we can communicate amongst
10 each other and also research, whatever may be
11 appropriate.

12 THE COURT: There is an Internet connection in
13 the room.

14 MR. MATASAR: And that would be available to
15 us? That would be great.

16 THE COURT: Well, that's an interesting
17 question, because our head IT guy is worried about
18 security in this building.

19 MR. MATASAR: I can see why he would be.

20 THE COURT: And I think he's a little --
21 probably overboard on that. But he has his job and I
22 have mine. Why don't you see what you can do first.
23 You know, those cell phone -- whatever they are called,
24 I don't use one, but I know I've had a lot of lawyers
25 use them up on the fifth floor.

1 MR. MATASAR: The Verizon one doesn't work
2 here. We can try another device. Maybe an AT&T or a
3 Sprint one.

4 AGENT ANDERSON: My AT&T wireless card works in
5 the courthouse.

6 MR. MATASAR: Well, we'll see what we can do.

7 MR. WAX: But if that works, that would be
8 okay?

9 THE COURT: Yeah. In terms of technology
10 breaks, we don't break for the day.

11 MR. WAX: But we are planning on having two
12 redundancies.

13 MR. MATASAR: Two lawyers, two computers,
14 somebody goes down, we're good.

15 MR. WAX: Another table where we could have --
16 our investigators would be coming, sitting, notebooks, a
17 place to have that sort of thing.

18 THE COURT: What I would rather I think you
19 do -- are you going to need that kind of help?

20 MR. CARDANI: We're going to have Susan Cooke
21 here for our ALS, running this.

22 THE COURT: Yeah.

23 MR. CARDANI: She'll be here.

24 THE COURT: If you have tables like that, we
25 have extra chairs in here because of our Sunwest case,

1 and it gets, you know, a cast of thousands. So all
2 these chairs around the back, we can pull. We can put
3 little tables on the sides over there, if we need to. I
4 don't want any more up in the well, though, so --

5 MR. WAX: In the back behind --

6 THE COURT: That's right, on the side in the
7 back, yes. There is room for them.

8 MR. WAX: All right. And, you know, we'll have
9 either a huge shopping type cart with notebooks. And I
10 mean, we got --

11 THE COURT: Sure.

12 MR. WAX: And we had talked earlier with
13 Ms. Weller, I believe, about the possibility of having
14 an office or using the spare courtroom during the course
15 of the trial. And we just want to be sure, if we can,
16 that we can have a place where we can do, you know, work
17 either early in the morning or at night, and not have to
18 be horsing things back and forth because both of us are
19 set up in Portland, and hope that we could have a
20 place -- Mr. Cardani and Mr. Gorder could certainly use
21 their office in this building. And we hope that there
22 will be a place where we can set up shop as well.

23 THE COURT: We'll find something for you.

24 MR. WAX: Which would raise the issue of access
25 to the courthouse after hours for Mr. Matasar. We're

1 not asking for it for our client. But in Portland, my
2 key card for the courthouse will get me in 24 hours a
3 day. And we hoped that we could arrange so that, you
4 know, the Federal Defender's staff and Mr. Matasar could
5 be using whatever space is set up for us.

6 THE COURT: Somebody needs to take
7 responsibility. What our marshal -- you know, I bring
8 in people for settlement conferences at off hours all
9 the time. But I just can't have staff in and out, and
10 so on. Someone is going to have to -- a couple of
11 people have to just be responsible for that. And we'll
12 work it out with Mr. Barr.

13 MR. WAX: Thank you.

14 MR. GORDER: Your Honor, if I could just add
15 this, I don't know if the marshal --

16 THE COURT: Ms. Weller, I wonder about the
17 conference room that's down out towards the entrance on
18 the side. I don't know if that still has a key card on
19 that entrance or not.

20 MS. WELLER: Your Honor, I can make
21 arrangements wherever you think would be appropriate.
22 Access to the building from the front has a key card
23 access, but the east side of the building does not have
24 a key card access.

25 THE COURT: The other thing we might think

1 about, if it works for them, is Pretrial Services has
2 some empty offices.

3 MS. WELLER: Yes.

4 THE COURT: And that's very near a key card
5 entrance. So let's inquire of them. Because they are
6 set up as offices.

7 MS. WELLER: Yes, Your Honor. I'll check into
8 that.

9 THE COURT: We only have two officers here, and
10 I built a big one.

11 MR. GORDER: Your Honor, I was just going to
12 mention for Mr. Wax's benefit that the card that I have
13 that gets us into the courthouse in Portland, the
14 marshals programmed here so it works at the entrance.

15 THE COURT: You can. I will tell you, our
16 marshal's office is somewhat jealous of that
17 prerogative. And so I'll probably have to speak to
18 them. But that's why I'm going to have to say probably
19 that one of the two of you will be letting people in and
20 out of the building or something like that.

21 MR. WAX: I'm more than happy to take
22 responsibility for it.

23 THE COURT: Sure.

24 MR. CARDANI: Speaking of technology, that
25 screen right there, can I utilize that for opening

1 statement?

2 THE COURT: Yes. It plugs into the floor over
3 here, sure.

4 MR. CARDANI: All right. We're going to be
5 offering a chart for use, you're going to hear a lot of
6 names and see a lot of faces. We're going to have a
7 chart prepared. We'll run it by counsel beforehand.
8 But we'd like this chart to be available as the case
9 goes, so that people -- jurors can associate individuals
10 and roles with faces.

11 THE COURT: Let me see it before the morning of
12 trial.

13 MR. CARDANI: Of course. And we'll have a
14 PowerPoint or something for opening statement.

15 THE COURT: Sure.

16 MR. CARDANI: And lastly, the trial schedule,
17 we start bright and early Monday, August 30th.

18 THE COURT: Yes.

19 MR. CARDANI: And does the court anticipate a
20 full week that week?

21 THE COURT: Yes.

22 MR. CARDANI: And then the next Monday is Labor
23 Day.

24 THE COURT: Yes.

25 MR. CARDANI: Does the court have any intention

1 of holding court that day?

2 THE COURT: I don't believe so.

3 MR. CARDANI: Okay. It helps for the
4 scheduling, and then we'll go the rest of that week.

5 THE COURT: And then the trial will be over.

6 MR. CARDANI: Thank you.

7 THE COURT: You are welcome.

8 MR. WAX: Judge, just in terms of trial
9 scheduling, Ramadan begins in August and runs through,
10 in all probability, Friday, the 10th. Mr. Sedaghaty
11 will, in all probability, be fasting. And, you know,
12 while he can accommodate and shift some of his prayer
13 times, we hope that you will be sensitive to that. And
14 on Friday, the 10th, if that is the end of Ramadan,
15 there is a more important prayer for that day. That is
16 also the week of Rosh Hashanah, and I just want to make
17 you aware of that.

18 THE COURT: We'll get the directions of both
19 prayers then, right?

20 MR. WAX: So --

21 THE COURT: Which way is Mecca? And which way
22 is Jerusalem? They are sort of close from here.

23 MR. WAX: We have a number of our witnesses,
24 just in terms of the logistics and with the Labor Day
25 weekend. Should we anticipate having any people

1 available on Friday the -- whatever it is, 3rd of
2 September, or should we --

3 THE COURT: Yes.

4 MR. WAX: -- anticipate kicking off early on --

5 THE COURT: Yes. I want a full week that first
6 week. And I -- I do not want to run out of witnesses.
7 And I say we won't work on Labor Day, but, frankly, if
8 we're not making good enough progress, we might, because
9 this case will be tried in two weeks.

10 MR. MATASAR: Will that be --

11 THE COURT: We can choose a Saturday instead,
12 or something, too. I work on Saturdays.

13 MR. CARDANI: And Sundays, I've figured out.

14 MR. MATASAR: Now that we do know the end date
15 of the trial, I think we're pretty sure on that, will
16 there be a time that the government's case will have an
17 end date similarly, or how do you do that, Your Honor?
18 I know that -- we'd just like to know how that will go.

19 MR. CARDANI: Well, if this thing -- if they
20 are saying -- there is a possibility we'll conclude this
21 case before the first week is over.

22 THE COURT: I expect that.

23 MR. MATASAR: Great.

24 MR. CARDANI: So depending on cross, so you
25 should have witnesses available.

1 THE COURT: I don't know if you've tried a case
2 in front of me, Mr. Matasar. You'll have to remind me.

3 MR. MATASAR: I have not.

4 THE COURT: Mr. Cardani has. We move along.

5 MR. MATASAR: I have heard. I am told that you
6 do.

7 THE COURT: A wonderful courtroom deputy in
8 Portland, I tried a case of -- I don't know which judge
9 it belonged to, but one of them, and when we got to sort
10 of the end of the evidence, I said "what do you think of
11 the pace?" She's a delightful person, but she says "I
12 didn't know it was a race."

13 MR. MATASAR: Just with you telling that story
14 without being cowed or feeling bad about it says a lot.

15 THE COURT: I feel just great.

16 MR. MATASAR: Yeah, use it as a compliment.
17 That's great. That's the point of that story to me.

18 THE COURT: Helps you understand.

19 MR. MATASAR: Yes. It was clear that you were
20 not having any trouble deciding the one lawyer for
21 opening, one lawyer for closing issue.

22 THE COURT: That's true.

23 MR. MATASAR: Might there be some concerns that
24 you have that we could address or is it just not worth
25 even discussing? That it's just a hard-and-fast rule

1 that this -- I mean, it may be when two lawyers -- when
2 I see two lawyers doing something, one says the same
3 thing as the other, or is there something we can maybe
4 adapt on, we could try to do that.

5 THE COURT: You think the case is more
6 complicated than I do, I guess. I think one lawyer is
7 enough.

8 MR. WAX: For what it's worth, Colleen Scissors
9 and I split an argument in front of Judge Marsh some
10 time ago, and we didn't duplicate, we moved right along,
11 and a seamless transition.

12 THE COURT: He is a lovely man and one of my
13 heros.

14 MR. MATASAR: Okay. Thank you, Judge.

15 THE COURT: Anything else?

16 MR. MATASAR: No. Thank you.

17 (The proceedings were concluded at 4:15 p.m.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 3rd day of August, 2010.

9
10
11
12 /s/ Deborah Wilhelm

13 _____
14 Deborah Wilhelm, RPR
15 Certified Shorthand Reporter
16 Certificate No. 00-0363
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